



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, California 93003



IN REPLY REFER TO:  
2009-EC-0016

May 26, 2009

Mary Adams  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, California 93401

Subject: Comments Regarding the Proposed Revisions to the 303(d) list of Impaired Water Bodies for the Central Coast Region, California

Dear Ms. Adams:

We are responding to the California Regional Water Quality Control Board, Central Coast Region's (Central Coast Water Board) notice of public comment period for the proposed revisions to the 303(d) list of impaired water bodies and integrated assessment for the Central Coast Region. The Clean Water Act (CWA) requires states to conduct an assessment of the quality of all their waters and develop a list of those waters that are impaired or threatened. The Central Coast Water Board covers watersheds in California's central coast between Santa Cruz and Santa Barbara. Numerous federally listed species occur within these watersheds and may benefit from improved water quality and watershed function.

The U.S. Fish and Wildlife Service's (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(18) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Service regulations (50 CFR 17.3) define "harm" to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through the Service in two ways: through interagency consultation for projects with Federal involvement pursuant to section 7, or through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act.

We are concerned with the Central Coast Water Board's recommendation to remove Oso Flaco Lake from the 303(d) list for nitrate. Oso Flaco Lake provides much of the last remaining habitat for two critically endangered plant species, *Arenaria paludicola* (marsh sandwort) and

*Nasturtium gambelii* [*Rorippa gambelii*] (Gambel's watercress), as well as the last remaining population of *Arenaria paludicola*.

We recommend that Oso Flaco Lake remain on the 303(d) list because nitrate concentrations exceed the levels that support aquatic life beneficial uses. In 25 water samples taken from Oso Flaco Lake in 2000-2001 and 2007, levels of Nitrate/Nitrite (as N) averaged 30.51 milligrams per liter (mg/L) with a minimum of 22.00 mg/L and a maximum of 37.10 mg/L (California Regional Water Quality Control Board (CRWQCB) 2008). Biostimulation in Oso Flaco Lake has caused the rapid and extreme growth of common wetland species, which are now crowding out sensitive species that have not become similarly vigorous. We understand that Oso Flaco Lake is not designated for the Municipal and Domestic Supply (MUN) beneficial use, and therefore is not held to the 10 mg/L nitrate objective that is mandated under that designation. However, Oso Flaco Lake is designated for multiple aquatic life beneficial uses including: 1) wildlife habitat; 2) warm fresh water habitat; 3) spawning, reproduction, and/or early development; 4) preservation of biological habitats of special significance; and 5) rare, threatened, or endangered species (CCRWQCB 2006). A screening criterion for nitrate of 1.0 mg/L to protect aquatic life beneficial uses was proposed by the Central Coast Water Board (CRWQCB 2009). Because nitrate values in Oso Flaco Lake are 30 times greater than the Central Coast Water Board's proposed screening value for aquatic life beneficial uses, Oso Flaco Lake is impaired by nitrate according to your standards and should not be removed from the 303(d) list for nitrate and these high nitrate levels are having an adverse effect on listed species (through the increase in biostimulation).

Additionally, we believe that your decision to remove Oso Flaco Lake from the 303(d) list of impaired water bodies is a discretionary action under Section 401 of the CWA as delegated to the CRWQCB by the U.S. Environmental Protection Agency (EPA). We understand that MUN is not a designated beneficial use of Oso Flaco Lake and therefore removing Oso Flaco Lake from the 303(d) list for nitrate because of impairment to this beneficial use is not a discretionary action; however, five aquatic life beneficial uses (see above) have been designated for Oso Flaco Lake (CRWQCB 2006) that do not have numeric targets that define a threshold value for impairment of aquatic life by nitrate. Therefore, your decision to remove Oso Flaco Lake from the 303(d) list is a discretionary action on your part. Discretionary actions with a federal nexus (i.e., delegation of CWA authority by EPA to the CRWQCB) that may affect a listed species or critical habitat are subject to interagency consultation pursuant to Section 7(a)(2) of the Act. The removal of Oso Flaco Lake from the list of impaired water bodies may have an adverse effect on the last remaining wild population of *Arenaria paludicola*.

In summary, we are concerned about your decision to remove Oso Flaco Lake from the 303(d) list of impaired water bodies because:

1. Oso Flaco Lake has five aquatic life beneficial uses that are impaired by nitrate;
2. Removing Oso Flaco Lake from the 303(d) list is a discretionary action authorized under Section 401 of the Clean Water Act and requires consultation under Section 7 of the Act, it may have an adverse effect on federally listed species; and

3. The last remaining known wild population of *Arenaria paludicola* occurs in Oso Flaco Lake.

We appreciate the opportunity to provide comments for the proposed revisions to the 303(d) list of impaired water bodies for the Central Coast Region, and look forward to working with you to improve water quality and habitat for listed species. If you have any questions regarding this matter, please contact Jenny Marek or Mark A. Elvin of our staff at (805) 644-1766, extension 325 or 258 respectively.

Sincerely,

/s/: Chris Dellith

Chris Dellith  
Senior Biologist

cc: Katie McNeill, Central Coast Regional Water Quality Control Board  
Ronnie Glick, California Department of Parks and Recreation

## REFERENCES

- California Regional Water Quality Control Board, Central Coast Region. 2006. Water Quality Control Plan for the Central Coast Basin. Updated from September 8, 1994. [http://www.swrcb.ca.gov/rwqcb3/publications\\_forms/publications/basin\\_plan/](http://www.swrcb.ca.gov/rwqcb3/publications_forms/publications/basin_plan/). Accessed 21 May 2009.
- California Regional Water Quality Control Board, Central Coast Region. 2008. Total Maximum Daily Loads for Nutrients (Nitrate, Unionized Ammonia and Biostimulatory Substances) in Santa Maria River and Oso Flaco Creek Watersheds, Santa Barbara and San Luis Obispo Counties, California. Draft Project Report. September 9, 2008.
- California Regional Water Quality Control Board, Central Coast Region. 2009. Interpreting Narrative Objectives for Biostimulatory Substances Using the Technical Approach for Developing California Nutrient Numeric Endpoints. Central Coast Ambient Monitoring Program Technical Report. April 2, 2009.